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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/705,283	11/10/2003	David Morrow	WLI 1040 PUS	4917

7590

05/04/2004

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EXAMINER

WELCH, GARY L

ART UNIT PAPER NUMBER

3765

DATE MAILED: 05/04/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/705,283	Applicant(s) MORROW ET AL.	
	Examiner Gary L. Welch	Art Unit 3765	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
 - If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
 - If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
 - Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 November 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1 and 20-46 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) 28-33, 38-41, 45 and 46 is/are allowed.
- 6) ☒ Claim(s) 1, 20, 27, 34, 35, 37, 42 and 44 is/are rejected.
- 7) ☒ Claim(s) 21-26, 36 and 43 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 10 November 2003 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description:

56 (page 6, lines 23 and 31)

68 (page 7, line 22)

106 (page 9, line 19)

108 (page 9, line 21)

110 (page 9, line 24)

116 (page 10, line 18)

118 (page 10, line 19)

120 (page 10, line 19)

122 (page 10, line 20)

124 (page 10, line 30)

134 (page 11, line 7)

A proposed drawing correction or corrected drawings are required in reply to the Office action to avoid abandonment of the application. The objection to the drawings will not be held in abeyance.

Specification

2. The disclosure is objected to because of the following informalities: The preliminary amendment referenced application number 09/098,331. It is believed that this is an error and that the correct application number is --09/908,331--.

Appropriate correction is required.

Claim Objections

3. Claim 1 is objected to because of the following informalities: The word "love" in line 9 should be changed to --glove--. Appropriate correction is required.

Double Patenting

4. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

5. Claim 1 is rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claim 1-36 of U.S. Patent No. 6,643,844. Although the conflicting claims are not identical, they are not patentably distinct from each other because the claims require a protective sports glove having a cuff portion, a

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hand portion, a palm and backside portion, a plurality of finger portions and a flange portion.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1, 20 and 27 are rejected under 35 U.S.C. 102(b) as being anticipated by Sauriol (U.S. 5,946,720).

Sauriol discloses a protective sports glove having a cuff portion 22, a hand portion having a palm portion 12 and an opposing backside portion 14 with a plurality of protective padded portions (Figure 6), the hand portion being coupled to the cuff portion 22 and having an inner side and an outer side, a plurality of finger portions 16 and flange portion 36 extending generally away from one of the inner side or outer side of the glove (Figure 1).

With regard to claim 20, the invention is disclosed substantially as claimed above. Note that the broadest interpretation of a flange and a wrist guard is used interchangeably in these rejections (i.e., element 36 of Sauriol is broadly considered a wrist guard and a flange since the structure of element 36 performs the function of protecting the wrist and also a flange).

With regard to claim 27, the wrist guard 36 is considered a rigid material.

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8. Claims 34 and 37 are rejected under 35 U.S.C. 102(b) as being anticipated by Morrow et al. (U.S. 5,983,396).

Morrow et al. discloses a protective sports glove 10 that is used in hockey or lacrosse and can be used by a sports goalie having a hand portion 12 with a palm portion 18, a back portion opposing the hand portion, at least one finger portion 22 coupled to and extending from the hand portion, a rigid thumb portion 20 coupled to and extending from the hand portion, a wrist guard 16 coupled to the lower portion and a flange portion 14 coupled to the hand portion opposite the rigid thumb portion and adapted to deflect a force applied thereto. The flange portion 14 does not substantially overlap the back portion. Note: while Morrow et al. discloses that element 14 is a wrist portion and element 16 is a cuff portion, a broad reasonable interpretation of the claims reveals that element 16 of Morrow et al. can be considered a wrist portion since the element encompasses the wrist of the wearer and element 14 can be considered a flange portion since the element extends outwardly from the hand and wrist portion of the glove.

With regard to claim 37, the glove is a lacrosse glove and can be worn by all players including a goalie.

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. Claim 35 is rejected under 35 U.S.C. 103(a) as being unpatentable over Morrow et al. (U.S. 5,983,396) in view of Karkanen (U.S. 4,507,807).

Morrow et al. discloses the invention substantially as claimed above.

However, Morrow et al. does not disclose that the thumb portion is seamless.

Karkanen teaches a work glove having seamless tips. The seamless tips provide a more comfortable fitting glove and increased sensitivity (Col. 2, lines 1-20). It is understood that the glove of Karkanen is not a protective sports glove nor that the entire thumb area is seamless. However, one of ordinary skill in the art would have gleaned the teaching of Karkanen (i.e., seamless finger portion) obvious for use with a protective sports glove since a proper fitting glove would be desired by one participating in a sport that requires grasping and holding of a hockey or lacrosse stick. Furthermore, it would have been obvious to extend the seamless tip region to encompass the entire finger region to provide maximum comfort and proper fit to the wearer.

11. Claims 42 and 44 are rejected under 35 U.S.C. 103(a) as being unpatentable over Morrow et al. (U.S. 5,983,396) in view of Wilder et al. (U.S. 5,787,506).

Morrow et al. discloses the invention substantially as claimed above.

However, Morrow et al. does not disclose a mesh layer for coupling the outer side to the back portion.

Wilder et al. teaches a hockey glove 10 having a hand portion 12, a palm portion 16, an outer side, a back portion 20, a protective padding (46, 47) coupled to the back portion, at least one finger portion 18, a thumb portion 18, a wrist guard 14

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and a flange portion 86. Furthermore, a mesh layer 42 is provided between the finger portions 18 for ventilation purpose.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide a mesh layer as taught by Wilder et al. to the glove of Morrow et al. to provide the wearer with a glove that allows air to freely circulate to the fingers and thumb thereby keeping the hand and fingers dry.

With regard to claim 44, the glove is a lacrosse glove.

Allowable Subject Matter

12. Claims 28-33, 38-41, 45 and 46 are allowed.

13. Claims 21-26, 36 and 43 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Conclusion

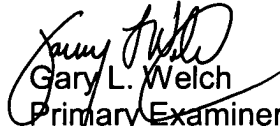
14. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Brine '909, Deutsch '073, Angas '698, Cote '162, Brine et al. '703, Cardinal '739, Hall et al. '243 and Cielo '967 disclose various protective sports gloves.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary L. Welch whose telephone number is (703) 305-0451. The examiner can normally be reached on Mon-Fri 5:30-3:00.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, John J. Calvert can be reached on (703) 305-1025. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).


Gary L. Welch
Primary Examiner
Art Unit 3765

glw